



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248
Patrick J. Ward, Secretary

MODIFICATION TO DECISION

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 060024

Petitioners, Jonathan Wadleigh and Joanne Womboldt, owners of 145 Longwood Avenue (the "Property"), applied to the Building Commissioner for permission to convert an attached three-unit building to a four-unit building by adding a basement apartment. The application was denied and an appeal to this Board was taken from the decision of the Commissioner. The Board, after providing legal notice, held a public hearing on July 20, 2006 and voted to grant the Petitioners the requested zoning relief, with conditions. The relief granted and conditions are fully set forth in the Board's Decision dated October 19, 2006, which is attached hereto and fully incorporated into this decision, as if set forth herein. Said decision was filed with the Town Clerk on October 19, 2006.

On November 7, 2006 the Petitioners appealed the October 19, 2006 decision in *Womboldt et al. v. Gordon et al.*, 06 MISC 331934 (Land Court), challenging the condition that the residential units at the Property remain rental units for 10 years from the date of the issuance of the certificate of occupancy for the additional basement unit. To consider settlement of this action, the Board held a duly-noticed public hearing on May 15, 2007 in the 4th Floor Conference room of Town Hall. The notice provided that:

The Zoning Board of Appeals will hold a public meeting followed by a public hearing relative to the following matter:

1. Proposed Executive Session: Associate Town Counsel will appear to discuss strategy with regard to pending litigation concerning Board of Appeals Case No. 060024 (*Wadleigh et al. v. Gordon et al.*, Case No. 06 MISC 331934 (Land Court)) relative to the property located at 145 Longwood Avenue; and
2. The Zoning Board of Appeals will hold a public hearing immediately following the meeting to consider modifying the condition imposed by the above-noted

decision that requires the residential units at the property remain rental units for 10 years.

Present at the hearing were Board members Harry S. Miller, Bailey Silbert and Murray G. Shocket.

Chairman Miller opened the hearing and invited Associate Town Counsel, John J. Buchheit to speak. Mr. Buchheit proposed that the Board go into Executive Session to discuss strategy with regard to the litigation brought by Petitioners, Womboldt *et al.* v. Gordon *et al.*, 06 MISC 331934 (Land Court). Chairman Miller moved that the Board go into Executive Session and then reconvene afterward in Open Session for the reasons set forth by Associate Town Counsel. By roll call vote, the Board unanimously approved the motion and the Board went into Executive Session, wherein the Board was advised of litigation strategy. The Board then closed the Executive Session and reconvened in Open Session.

Chairman Miller invited the Petitioners to present their case. The Petitioners were represented by Attorney Frederick Hayes, who stated that the effect of the prior decision was to create an additional housing unit. He expressed his opinion that the condition requiring the Petitioners to maintain the units at the Property as rental units for 10 years exceeds the Board's authority.

Chairman Miller invited other members of the public to speak. Myra Trachtenberg, a Precinct 3 Town Meeting member, stated that she attended the initial Planning Board hearing and that Mr. Wadleigh adamantly represented that the units would remain rental. She expressed dismay that Mr. Wadleigh is fighting the Board on its condition that requires the property remain rental for 10 years.

Petitioner Joanne Womboldt responded to Ms. Trachtenberg. She stated that it was her choice to appeal the Board's prior decision to Land Court. Mr. Wadleigh, her husband, promised to maintain units at the Property as rental units for as long as he lives. However, when he dies, she believes the condition makes it impossible for her to downsize and move into 145 Longwood Avenue, a house that she lived in for 20 years. She stated that Mr. Wadleigh has the ability to rent the property, has done a good job of managing the property and believes he will be able to do so for the rest of his life. She also stated that it is in the couple's financial best interest to keep the property rental property and that this is their intention.

Anne Stingle, an abutter from 147 Longwood Avenue stated that it was not clear to her what was decided about the parking in the Board's prior decision. Specifically, she did not know whether the Board had decided that the Property could accommodate three or four cars. Her position is that the Property cannot support four cars, and if four cars are parked there it would cause problems with parking at 147 Longwood Avenue.

Mr. Hayes, attorney for the Petitioners, responded to some of the comments. With Regard to concerns that the property would be converted to condominiums, he

stated that Mr. Wadleigh and Ms. Womboldt have no intention of converting the property to condominiums. And while Petitioners would be happy to have a condition stating that the property would remain rental for as long as Mr. Wadleigh is alive, the law does not allow the Board to do this. With regard to parking, Mr. Hayes represented that the Board made specific findings and placed requirements on the owners about the necessary parking, and that these requirements will be recorded in the chain of title for all future owners to see.

Chairman Miller then summarized the Board's position. He stated that the Board issues its decisions based on all of the facts put before it, particularly when a Petitioner is requesting significant zoning relief, as is the case here. The Board is open to modifying the rental condition; however, the Board suggests that the Petitioners propose some additional amenities in substitution of the condition that the Petitioners have challenged.

Petitioner Mr. Wadleigh stated that he raised the issue of maintaining the property as rental to the Planning Board because he knew that maintaining the Town's stock of rental property was one of the objectives of the Town's Comprehensive Plan. He stated that he was creating another rental unit and that what the Board was requesting would cause him another 6-month delay in the project, which was a major burden. Chairman Miller responded that the Board had no interest in delaying the Petitioners, and was convening on a Tuesday evening, which is not the Board's usual night to conduct a hearing, to consider this matter in order to move it along as quickly as possible. Mr. Wadleigh expressed the concern that by following the Board's suggestion, he would be starting all over again. Chairmen Miller clarified the Board's position. He stated that he was not suggesting that Petitioners go through the entire Planning Board process, but that Petitioners meet with a member of the Town's Planning staff to discuss additional public amenities and then, if they believe it is appropriate, to propose those to the Board in the next two or three weeks.

Daniel Karnovsky of 149 Longwood stated that the project needs to be finished. He stated that he has lived with construction in the courtyard for quite some time now. He stated that while it may be a good thing that the Town is seeking additional public benefits, it was not worth doing so if it came at a cost of delaying the project.

There being no further comments, the hearing was continued and the meeting adjourned.

After due notice, the Board reconvened the continued public hearing on May 21, 2007 at 7:00 pm in the Selectmen's Conference Room on the 6th Floor of Town Hall. Present were Harry S. Miller, Bailey Silbert and Murray G. Shocket. Petitioners, who were represented by Attorney Frederick Hayes, proposed to provide the following improvements to Longwood Park in place of the condition restricting the units at the Property to rental units for a 10-year period:

1. Improvement of water catchment area adjacent to children's play area,
2. Repair of timber wall directly next to young children's play equipment,

3. Additional plantings, and
4. Upgrade of stone path.

A more detailed description of these improvements is set forth in a document provided to the Board by the Petitioners. This document is attached hereto as "Exhibit A" and made a part of this decision as if fully set forth herein.

Petitioners represented that they had met with a member of the Planning Department. Polly Selkoe, Assistant Director for Regulatory Planning, informed the Board that she had spoken with Erin Gallentine, the Director of Parks and Open Space, and also with Annie Blair, Town of Brookline Landscape Planner/Architect, who had been working directly with Mr. Wadleigh on other improvements he is making to Longwood Park. According to Ms. Selkoe, Ms. Blair indicated that these benefits are in addition to what the Petitioners have been required to do in exchange for the use of an area of the park for the construction on the Property.

Chairman Miller invited the Petitioners to present their proposal. Mr. Hayes briefly reviewed the four public benefits proposed by the Petitioners, and stated that these support a finding, as required by §9.05(1)(d) of the Town of Brookline Zoning Bylaw, that "adequate and appropriate facilities will be provided for the proper operation of the proposed use." He added that item number 1 of the Petition's proposal, improvement of water catchment area, will improve drainage in an area of the park adjacent to 145 Longwood Avenue. That area is subject to flooding and during times of heavy rain creates a nuisance to those using the park and to others as it can be a breeding ground for mosquitoes. He stated his position that the additional benefits certainly put the Petitioners over the threshold required for approval of the grant of a Special Permit.

Board member Shocket requested that a condition be imposed that there will not be an occupancy permit granted for the new basement unit until the Petitioners have made the improvements proposed for Longwood Park. Ms. Womboldt expressed some concern that they may be delayed in performing improvements because of the Town's schedule, and did not want the occupancy permits held up because of this. Ms. Selkoe indicated that the Zoning Bylaw, §9.00(3), in lieu of withholding a certificate of occupancy, allows the Petitioners to post a bond to ensure that a condition imposed by the Board will be fulfilled.

The Board made the following findings: The intent of the Petitioners is to retain the units at the Property as rental units and the proposed project results in the creation of one additional rental unit. As a result, the proposal will not have a significant adverse effect on the supply of housing available for low and moderate income people. The Petitioners have proposed the public amenities set forth in Exhibit A. These amenities provide additional benefits to the neighborhood and, on balance, these and other benefits of the project outweigh the adverse affects of the project.

Accordingly, and in settlement of *Womboldt et al. v. Gordon et al.*, 06 MISC 331934 (Land Court), the Board of Appeals modifies its October 19, 2006 decision by

removing the condition requiring the Petitioners to maintain the residential units at the Property as rental units for a 10-year period, and replacing it with the following condition:

5. The Petitioners shall make the improvements to Longwood Park set forth in Exhibit A. The Town of Brookline Department of Public Works, Division of Parks and Open Space (the "Division") may waive the Petitioners' obligation to conduct an improvement if it determines that doing so is in the best interest of the Town. The improvements shall be overseen and approved by the Division, and, if required, the Park and Recreation Commission. The Building Commissioner shall not grant a certificate of occupancy for the new basement unit at the Property until he receives notice from the Division that the required improvements have been made or waived. A certificate of occupancy for this unit shall not be withheld if the reason the Petitioners have not completed the improvements is due to the Town restricting the Petitioners' access to Longwood Park to conduct the improvements. In the event this occurs, and if all other requirements for a certificate of occupancy are met, the Petitioners will be allowed to deliver a bond or deposit, as provided in the Town of Brookline Zoning Bylaw, §9.00, to insure compliance with this condition, and thereafter granted a certificate of occupancy. This condition grants no rights to the Petitioners or any other third party to enter Longwood Park to implement the improvements or conduct work.

All other conditions imposed under the original decision are included herein by reference and remain in full force and effect.

Unanimous Decision of
The Board of Appeals


Date of filing: June 20, 2007

A True Copy

ATTEST



Patrick J. Ward
Clerk, Board of Appeals


Harry S. Miller, Chairman

Twenty days have elapsed and no
Appeal has been filed.

A True Copy

ATTEST

Patrick J. Ward
Clerk, Board of Appeals

J:\Docs\81123\00000\01145445.DOC

EXHIBIT "A"

145 Longwood Ave.
ADDITIONAL PUBLIC BENEFITS OFFERED BY OWNER

The following improvements will be made to the Longwood Park at the owners expense prior to completion of the project. These are additional to those improvements offered previously at the Zoning Board of Appeals hearings in 2006.

1. Improvement of water catchment area adjacent to children's play area: This is a low-lying area ("bowl") with a storm water culvert at the bottom. In the spring and during other rainy periods this area often fills with water and becomes a muddy attraction to small children and a headache for parents and teachers at the school. It is outside the park area used for the construction. We will install a ring of cobblestone around the culvert to hold back the mulch in the area and line the bottom of the bowl with stone. This will inhibit blocking of the culvert by mulch and debris hastening drainage and help keep the area dry and free from mud. We will install perforated pipe just underneath the gravel directly into culvert hastening drainage and reducing collection of water on the surface.
2. Repair of timber wall directly next to young children's play equipment: This wall is approximately 3-4 feet high and 50 feet long. It is outside the area of construction. It was not properly installed and has inadequate support, is leaning, and in danger of collapsing. Repair includes excavating the full length of the wall, and straitening it. We will install new concrete footings with tie-ins to the wall, fill and landscape the area.
3. Additional Plantings: These shall now include an additional tree. This will be planted outside the park area used for the construction.
4. Upgrade of stone path: We will upgrade the stone path behind the tennis courts to asphalt. This will make it wheel chair accessible.

All work in park to be under supervision of the Department of Parks and Open Space.



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

333 Washington Street
Brookline, MA 02445
617-730-2010
Fax: 617-730-2298

PATRICK J. WARD, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 060024

Petitioners, Jonathan Wadleigh and Joanne Womboldt, owners of 145 Longwood Avenue, applied to the Building Commissioner for permission to convert an attached three-unit building to a four-unit building by adding a basement apartment in accordance with the plans submitted. The application was denied and an appeal to this Board was taken from the decision of the Commissioner.

On April 27, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed Thursday, June 1, 2006, at 7:00 P.M., in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place for a public hearing on the appeal. The petitioners requested and were granted a postponement of the hearing date and the appeal was rescheduled for Thursday, July 20, 2006, at the same time and place. Notice of the rescheduled hearing was mailed to the petitioner, to their attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others as required by law. Notice of the hearing was published on June 29, 2006 and July 6, 2006 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

Said Premise located in a
M-1.5

district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: 06/29/2006 and 07/06/2006

After postponement of the original hearing date, a public hearing was held by this Board on July 20, 2006, at 7:00 P.M., in the Selectmen's Hearing Room, 6th Floor. Present were Harry S. Miller, Bailey Silbert and Murray G. Shocket.

Petitioners were represented by Attorney Roger R. Lipson of 7 Harvard Street in Brookline. Mr. Lipson stated that the petitioners wish to construct a two-level four-bedroom basement apartment in an existing three-family house which apartment would consist of a total gross floor area of 1,990 square feet. Mr. Lipson informed the Board that the property is an attached building built around 1920 and is one of six attached rowhouse buildings situated around a courtyard known as the Longwood Courtyard. The property abuts the Longwood Playground and is adjacent to the Lawrence School. He stated that most of the properties in the Longwood Courtyard had been converted into condominiums but that the petitioners had no intention of converting their property and, that as long as they owned the property, they would continue to maintain them as residential rental units.

In summarizing the zoning issues requiring relief, Mr. Lipson stated that the two main

issues before the Board are the FAR and off-street parking requirements. He also pointed out that, under Section 5.05 of the Zoning By-Laws, the Board may waive the dimensional requirements provided no pre-existing non-conformities related to those requirements are increased and provided that all other requirements for the conversion to a four-unit building are met. Mr. Lipson pointed out that the addition of a fourth unit would require providing a total of nine parking spaces, four of which already exist at the property. He stated that the petitioners are seeking a special permit from the Board allowed under Section 6.01.2 which gives the Board of Appeals the discretion to issue a special permit under Article IX to waive not more than one-half the number of parking spaces required under Sections 6.02 and 6.05. Therefore, the petitioners are requesting approval for five spaces, the fifth space to be provided at the property owned by the petitioners at 155 Longwood Avenue which would be within the 400 feet required by Section 6.03.b.

Mr. Lipson next reviewed the history of the property. The land on which the property is built originally was wetlands and sloped down towards the Longwood Playground. Due to this unique topography, the land had to be filled in to make it level before construction of the properties could occur. As a result, a retaining wall, approximately twelve feet in height and running along the rear of the property, was constructed at the boundary line between it and the Longwood Playground. Over the years, due to drainage problems, the retaining wall, as well as the foundation of the property itself, sustained significant deterioration. This resulted in cracks in the wall and in the settling of the building's foundation. Mr. Lipson presented the Board with a copy of a report from Arthur Choo Associates, Inc., Consulting Engineers, who, after examining both the retaining wall and the building's foundation, concluded that the deterioration of both was the result of the topography of the property and the soil conditions of the wetlands

and the fact that the foundation of the property was supported by the wetlands soil. The report recommended that both the foundation and the retaining wall both required substantial reconstruction in order to provide improved support.

Mr. Lipson stated that the petitioner's lot in one of the smallest lots in the zoning district and contains only 3,725 square feet. The current allowable FAR for the district is 1.5, the existing FAR for the property is currently 1.8 and requested FAR is 2.1. He compared the petitioner's property with some of the other properties in the same courtyard. 143 Longwood Avenue, for example, originally a three-family house, was converted to a five-unit property. He pointed out to the Board that both 143 Longwood Avenue and another three-family property across the courtyard, which had similarly large units, were both above the current allowable FAR.

Mr. Lipson informed the Board that during petitioners' attempts to repair the retaining wall, some damage had occurred to the turf of the playground and that the petitioners had agreed to repair and reseed the damaged area. He stated that the petitioners had further agreed to provide some benefits to the Town such as improving an existing path in the playground that ran behind their property by replacing it with rolled crushed stone over asphalt and restoring a dilapidated fence around the tennis courts.

Addressing the petitioner's basis for being granted a variance, Mr. Lipson referenced the unique topography of the land, its status as wetlands, its sandy soil conditions, and the fact that the property's foundation is built on piles sitting on top of the sand, all of which conditions have resulted in drainage problems causing the retaining wall to crack and endangering the property's foundation. Mr. Lipson noted that Massachusetts General Laws, Chapter 40A, Section 10, in regard to the circumstances warranting the granting of a variance, listed, among other reasons,

soil conditions, topography of the land and that if a literal enforcement of the zoning by-law would cause a substantial hardship, that it was permissible for the Board to grant the desired relief without substantial detriment to the purposes of the by-law.

Mr. Lipson said that the petitioner's proposal would fulfill a much sought after need for a rental unit in the Town big enough for a large family. Such a rental unit would be especially attractive because of the property's location near public transportation, a school and a park. He stated that the proposed plan included the installation of attractive basement apartment windows in the large foundation wall facing the playground which would eliminate an ugly eyesore due to the foundation wall having been a favorite target of graffiti artists over the years and that this would be less of an incentive for them to continue their activities.

Chairman Harry S. Miller asked Mr. Lipson to briefly mention the hardship the petitioner would face if he had to comply with the zoning by-laws requiring a variance. In addition to the statutory reasons he previously alluded to, Mr. Lipson stated that the petitioner, in order to meet the financial burden of the high cost of repairing the retaining wall and the foundation of his property, he needed to convert the extremely large basement area into a fourth rental unit. He stated that if the retaining wall is not repaired properly, it not only will jeopardize the safety of his property and his neighbor's property across the courtyard but will also endanger the children who play in the playground as well as other users.

At the conclusion of his presentation, Mr. Lipson presented the Board with a petition in support of the application signed by 26 neighbors including nearly every owner in the Longwood Courtyard and also submitted two letters from two owners of condominium units in the courtyard.

After Mr. Lipson completed his presentation, he introduced the next speaker, the

petitioner's architect, Mark Nielsen, of CYMA 2, whose office is located at 318 Harvard Street, Brookline. Mr. Nielsen reviewed several cross-section diagrams of the proposed plan. He stated that the plan would also provide an enhanced fire egress at the rear of the property. Chairman Miller asked Mr. Nielsen if the floor of the sub-basement was remaining where it is currently. Mr. Nielsen stated that the floor was being moved down. He pointed out that there is a perimeter grade beam around the building which crosses over pile caps that go down to stronger earth. He stated that, due to settlement over the years, the bottom of the grade beam is less than one foot below the current grade. Mr. Nielsen said that, normally, you would build a footing that would extend four feet below grade so that you would not get an upheaval of frost. He also noted that there is a cracking along the foundation wall on the south side that faces the tennis courts. Mr. Nielsen said that what is required is to build a foundation wall that goes down below four feet and reinforces the grade beam by possibly supplementing the existing piles with additional piles. He stated that this work will be fairly labor intensive and will require that the work be done in stages.

Board member Murray Shocket asked Mr. Lipson if the petitioner's promise to the Planning Board that the property would remain as rental units for as long as they owned the property was an inducement for the Planning Board to approve the petitioner's application. Mr. Lipson said that it was a major factor in their recommendation. Mr. Shocket wanted to know what would prevent the petitioners from converting the rental property into a condominium after receiving approval of their application to build a fourth rental unit. Mr. Lipson responded that his client would be agreeable to a condition of the Board requiring the petitioner to maintain the property as rental units for as long as they owned the property. Mr. Shocket asked what would happen if the petitioner sold 145 Longwood Avenue. Mr. Shocket noted that the Planning Board

had recommended as a condition that the petitioner be required to provide the off-site parking space at 155 Longwood Avenue for a period of ten years. Mr. Shocket asked Mr. Lipson if the petitioner would be agreeable to maintaining the rental units at 145 Longwood Avenue as rental units for the same period of time. Mr. Lipson replied that it has always been his client's intention to maintain 145 Longwood Avenue as rental housing but wished to confer with him directly on this point.

Jonathan Wadleigh, one of petitioners, addressed the Board in reply to Mr. Shocket's question. He stated that he had owned 145 Longwood Avenue for 33 years and that he had owned 155 Longwood Avenue for 14 years. Mr. Wadleigh stated that he had always maintained the units at 145 Longwood Avenue as rental units and would continue to do so until the day he dies. He stated, however, that he was concerned about his wife and her health if she were required to take over the responsibilities of managing the rental units upon his death. He said that both properties were the main source of their income. Mr. Shocket stated that he did not doubt Mr. Wadleigh's intentions but was concerned about what might happen if the petitioner sold 145 Longwood Avenue. Mr. Shocket stated that he would like to see something in the conditions that would maintain 145 Longwood Avenue as rental property. Mr. Wadleigh stated that he understood the Planning Board decision in regard to the off-site parking space to mean that if he ever converted 145 Longwood Avenue into a condominium, it would make sense for the off-site parking space to be deeded to that particular condominium unit.

Chairman Miller addressed Mr. Wadleigh and stated that what the Board is concerned about goes beyond the off-site parking space and that the Board would need to know if the petitioner is willing to accept a condition relative to the rental use of 145 Longwood Avenue for a specific period of time. Chairman Miller stated that the Board has no authority to make a

condition dependent on a term of ownership.

Mr. Lipson asked Chairman Miller what period of time the Board would consider for requiring the property to be maintained as rental units. Mr. Shocket responded saying that he would like to see a period of time conditioned along the lines of the Planning Board recommendation for maintaining the off-site parking space, namely, ten years. Mr. Shocket read a portion of the Planning Board report and stated that he believed that the maintenance of 145 Longwood Avenue as a rental property was a significant factor in the Planning Board's recommendation.

Chairman Miller stated that Mr. Shocket's statement was a worthwhile comment and said that the Board of Appeals is charged with making certain findings in regard to the issuance of a variance which findings goes well beyond the granting of a special permit.

Mr. Lipson, after conferring with the petitioner, stated that the petitioner believes that the ten year period, as noted in Condition No. 2 of the Planning Board's recommendation for the off-site parking space, which period runs from the date of issuance of the certificate of occupancy for the fourth unit, is a fair amount of time.

Chairman Miller then asked whether there was anyone present who wished to speak in favor or in opposition to the petitioner's application. There were none.

Chairman Miller then asked for the report of the Planning Board. Timothy Greenhill, Staff Planner, of the Department of Planning and Community Development, representing the Planning Board, presented the Planning Board Report for 145 Longwood Avenue, dated June 29, 2006. Mr. Greenhill stated that the Planning Board found that the petitioner provided satisfactory evidence for a variance. He stated that there were some concerns raised in regard to the additional parking space which required the condition to use the off-site parking space on the

petitioner's other property located nearby at 155 Longwood Avenue. Mr. Greenhill stated that the Planning Board found that there were many improvements to the property. He noted that the Planning Board specifically mentioned that the use of rental space was a benefit to the community and a much needed commodity.

Chairman Miller stated that if there is approval by the Board of the application, that the additional condition which the Board has been discussing will make reference to the point made by the Planning Board in their Report that they were pleased that the petitioner would be creating a new rental unit and would be maintaining the other three units as rental housing since that is one of the major goals of the Comprehensive Plan and the Coolidge Corner South side Neighborhood Association.

Mr. Greenhill stated that the Planning Board, by a vote of 3 to 1, recommended approval of the proposal subject to the following conditions:

- 1) Prior to obtaining a building permit, the applicant shall submit to the Assistant Director of Regulatory Planning a final landscaping plan and parking plan for review and approval.
- 2) In addition to providing 4 parking spaces on-site at 145 Longwood Avenue, 1 parking space shall be provided at 155 Longwood Avenue for one of the rental units at 145 Longwood Avenue for at least 10 years from the date of issuance of the Certificate of Occupancy. If the ownership of 155 Longwood changes prior to the expiration of the 10 year period, the new owner of 155 Longwood shall have 90 days to provide a new parking space either on site or off site with evidence of such submitted to the Department of Planning and Community Development.
- 3) When the owner of 145 Longwood Avenue, who also currently owns 155 Longwood Avenue, shall transfer title to a new owner of 155 Longwood Avenue, the deed to the new owner shall reference the Board of Appeals decision No. 060024 including the Book and Page Numbers and the date of recording of such decision in the Norfolk Registry of Deeds.
- 4) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land

surveyor; b) floor plans and building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds.

Chairman Miller then asked for the recommendation of the Building Department. Frank DeAngelis, Building Inspector, Brookline Building Department, stated that he is familiar with the property because it is within his district of inspection. Mr. DeAngelis stated that he is familiar with the work being performed on the property in connection with a prior building permit. He stated that the Building Department has reviewed the proposed plans and has no objections to the proposal.

Chairman Miller asked if the Board members had any questions. Mr. Shocket stated that he had no objections to the proposal but would like to see a condition added to the Board's decision requiring that the property be maintained as rental property for a period of time regardless of who owns the property. Mr. Shocket added that he would like to note that it was represented to the Board that the maintenance of the property as rental housing was one of the major reasons to grant a variance.

Chairman Miller stated that Mr. Lipson has presented a good argument as to why this proposal has met the elements for a variance. Chairman Miller stated that since the use of rental housing was an important consideration at the Planning Board level, the provision of an additional condition, namely, that the property at 145 Longwood Avenue be required to maintain its units as rental units for a period of 10 years from the date of issuance of the Certificate of Occupancy for the fourth unit and that such condition be noted in the Board's decision as an important inclusion in the granting of the relief sought by the petitioner.

Mr. Shocket stated that he believed that the length of time of the condition was fair.

The Board makes the following findings pursuant to Section 9.05(1):

1. The specific site is an appropriate location for the conversion of a three-family house to a four-family house.
2. The use as proposed by the petitioner will not adversely affect the neighborhood.
3. The proposed plan does not constitute a nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed plan will not have a significant adverse effect on the supply of housing available for low and moderate income people.

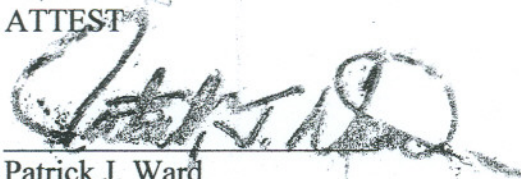
Accordingly, the Board of Appeals votes unanimously to grant the petitioner's application subject to the conditions as set out herein above in the Planning Board Report dated June 29, 2006 and including the additional condition imposed by the Board as stated herein.

Unanimous Decision of
the Board of Appeals

Date of Filing: October 19, 2006

A True Copy:

ATTEST



Patrick J. Ward
Clerk, Board of Appeals


Harry S. Miller, Chairman

Twenty days have elapsed and no
appeal has been filed.

A True Copy:

ATTEST:


Patrick J. Ward
Town Clerk